THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

RECEIVED
Dec 23 2020
SC Court of Appeals

Appellate Case No. 2019-001488

MB Hutson/MB Hudson, ... Appellant,

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, ... Respondents.

**RESPONDENTS' RETURN TO
APPELLANT'S MOTION TO AMEND HIS DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
AND APPELLANT'S DECEMBER 22, 2020, LETTER TO THE COURT**

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. ("Respondents PAIC"), Timothy J. Newton ("Newton") and J.R. Murphy ("Murphy") (collectively "Respondents"), jointly file this Return to Appellant's Motion to Amend his Designation of Matter to be Included in the Record on Appeal, filed December 18, 2020, and to Appellant's letter to the Court of Appeals, filed December 22, 2020. Respondents further crave reference to the arguments presented in Respondent's Second Joint Motion to Correct the Index and Record on Appeal, which they filed with this Court on December 17, 2020.

BACKGROUND

Appellant filed his original Designation of Matter on or about November 12, 2019. It listed a single item: "RICHLAND COUNTY COMMON PLEAS Case History for Case 2018CP4006344" and had a two-page document attached. Appellant subsequently filed his Initial Brief of Appellant on or about March 2, 2020.

Respondents filed their respective Initial Briefs and Designations of Matter. Respondents' Designations included all court filings from the trial court proceedings and the hearing transcript.

Appellant filed what he titled "Responses" to the Initial Briefs of Respondents, which appear to be his attempt at Reply Briefs, on April 27 and May 7, 2020. The Court ordered Appellant to comply with the applicable page limitations for Reply Briefs, which he did with the filing of an Amended Reply Brief to PAIC on August 6, 2020. Appellant did not file any additional Designation of Matter with his Reply Briefs or Amended Reply Brief.

The Record on Appeal was due to be served upon Respondents on September 8, 2020. On September 8, 2020, Appellant delivered a large stack of documents to Respondents. However, the content and format of the Record prepared by Appellant were deficient in numerous respects.

On September 11, 2020, Respondents sent correspondence to Appellant identifying all of the deficiencies in the Record on Appeal in detail and requested Appellant seek additional time from this Court to correct them.

On or about September 15, 2020, Appellant served a Request for Extension to file the Record on Appeal, asking the Court to identify any deficiencies in the Record.

Accordingly, on September 25, 2020, Respondents filed a Motion to Direct Appellant to Correct Record on Appeal and Hold Final Briefing in Abeyance. Respondents provided the Court

with the list of deficiencies that had already been identified to Appellant in the September 11, 2020, letter. Appellant filed no return to the Motion.

On November 30, 2020, this Court granted the Motion to Correct Record on Appeal "in its entirety." The Order provided Appellant thirty days from the date of the Order to serve and file a Record on Appeal that complies with the South Carolina Appellate Court Rules. The Order further instructed: "The record must contain consecutively numbered pages, an index, and every page of all matters designated by the parties. The record may not include any matters not designated by the parties or first presented to the lower court." The Order also denied Appellant's motion requesting to include evidence to prove extrinsic fraud.

On December 3, 2020, Appellant requested Respondent's counsel provide him with another copy of the September 11 deficiency letter, which they did.

On December 7, 2020, Appellant asked if there was any objection to service of the corrected Record on Appeal by e-mail. Respondents' counsel confirmed there was none.

On December 10, 2020, Appellant inexplicably filed a Return to Respondents' Motion to Correct the Record on Appeal, despite the fact that this Court already granted Respondents' Motion.

On December 11, 2020, Appellant filed an Amended Designation of Matter to be Included in the Record on Appeal. The proposed Amended Designation was not accompanied by any motion.

Thereafter, on December 16, 2020, Appellant filed a Record on Appeal Index, which he indicated would be followed by the submission of the Record on Appeal in four parts. The afternoon, the Court of Appeals sent correspondence to Appellant explaining:

> We are in receipt of your response to the respondents' joint motion to direct appellant to correct the record on appeal. Please be advised that this motion was decided by this Court's order dated November 30, 2020. Therefore, no further action will be taken on your response.

> Furthermore, we are in receipt of an amended designation of matter. Please be advised that if you wish to amend your designation of matter, you must serve and file a motion pursuant to Rule 240 of the South Carolina Appellate Court Rules. Therefore, no further action will be taken on your amended designation of matter unless a motion is filed and the record on appeal must be served by December 30, 2020.

Ltr. from COA Clerk, Dec. 16, 2020.

Later that evening, at approximately 8:00 p.m., Appellant attempted to file the four volume Record on Appeal via Adobe Acrobat.

On December 17, 2020, Respondents filed a Motion to Correct the recently filed Index and Record on Appeal, citing the inclusion of improper argument, the failure to include material that was properly designated by Respondents, the inclusion of material not properly designated by any party, and inconsistences in the page references between them.

On December 18, 2020, Appellant filed a Motion to Amend his Designation of Matter. While titled a motion, Appellant failed to provide any explanation for his delay in seeking such an amendment or the necessity of including the new material listed.

On December 22, 2020, Appellant filed a letter with this Court, directed at the Clerk of Court. Therein, Appellant asks that the errors in the Record on Appeal he has filed be forgiven because he is pro se and accuses Respondent's counsel—whom Appellant has repeatedly accused of criminal and professional misconduct—of attempting to make Appellant look "disreputable." Even in his December 22 letter, Appellant accuses counsel of misrepresentations, fraud, and causing Appellant's purported indigence. Appellant further argues that he has submitted overwhelming evidence in support of his appeal such that his case should be remanded for a trial.

LAW/ANALYSIS

"[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and [the] Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

Rule 209(a) of the South Carolina Appellate Court Rules provides the time to serve and file the Designation of Matter to be Included in the Record on Appeal:

> **Time to Serve and File.** At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. . . . .

The timing, content, format, and certification of the Record on Appeal are governed by Rule 210. Specifically, Rule 210(c) provides:

> The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. . . . .

Rule 210(c), SCACR.

Respondents opposition to Appellant's Amended Designation mirror the arguments in their recent Motion to Correct to the Index and Record.

Appellant's Amended Designation is largely repetitious of the designations filed by Appellant, such that amendment of his designation to include those matters is unnecessary and duplicative.

Appellant further seeks to designate a "Read Sheet" for inclusion in the Record, which he lists under the heading "EXHIBITS":

> 19. Hutson's "**Read Sheet**": Prior to Plaintiff presenting his case to Judge Nettles, (Transcript, page 22, lines 14-19), Hutson personally distributed a twenty-four (24) page Exhibit Package to all parties (Hon. Judge Nettles, Tim Newton, Esq., JR Murphy, Esq., and Christian Stegmaier, Esq). Plaintiff refers to the Exhibit as his "Read Sheet" to the Honorable Judge Nettles (Transcript p. 22, line 19), which consisted of excerpts from Plaintiff's earlier filings. The copy provided herein includes Plaintiff's hand-notes and talking points that were planned, although cut short by the Judge (Transcript p. 46, ll. 9 – p. 47, ll.25).

Inclusion of the "Read Sheet" in the Record would be improper. As an initial matter, it is unclear, since Appellant did not mark the document as an Exhibit at the hearing, whether the "hand-notes" and "talking points" he references were also included in the document that Appellant handed up to Judge Nettles during the hearing. As such, a true and accurate copy the document cannot be verified for inclusion in the Record.

Appellant further acknowledges that the document was merely his "planned" argument, only some portions of which were made at the hearing. To the extent this document contains arguments that were never raised to the trial court and ruled upon, such arguments cannot now be asserted on appeal. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."). The arguments that were articulated to the lower court are contained in the hearing transcript itself.

Moreover, the transcript of the June 26, 2019, proceedings reveals that no documents were marked or admitted as exhibits at the hearing. (**Exhibit A**, June 26, 2019 Hr'g Tr. pp. 1-3). Appellant never moved to include his handout in evidence at the hearing before Judge Nettles. If Appellant had made such an effort to offer the "Read Sheet" into evidence, it would have been met with a timely objection from Respondents. "To hold evidence to which reference is made, but which is not offered into evidence, is admissible would severely prejudice the party opposing its

introduction by virtually precluding the party from placing the grounds for his objection on the record." Roberts v. Roberts, 299 S.C. 315, 319, 384 S.E.2d 719, 721 (1989). Where, as here, Respondents were never given the opportunity to timely object to its inclusion. Appellant's attempt to designate the material after the initial briefing should be rejected.

Furthermore, Appellant does not specify why this document is necessary. Appellant does not appear to contend that his initial brief relied upon it. Nor has Appellant supported his request with a demonstration that this document is relevant to this appeal. See Rule 209(b), SCACR. Accordingly, the "Read Sheet" should not be listed in the Index or included in the Record.

Finally, with respect to Appellant's December 22 letter, Appellant's pro se status does not exempt him from the Appellate Court Rules, which our Court's have made clear are not mere technicalities. See State v. Burton, 356 S.C. 259, 589 S.E.2d 6, 9 n. 5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."); City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 49, 800 S.E.2d 782, 793 (2017) ("No one, rich or poor, is entitled to abuse the judicial process." (quoting Childs v. Miller, 713 F.3d 1262, 1265 (10th Cir. 2013)))." Moreover, to characterize Appellant's errors in the Record as "minor mistakes" is inaccurate. While Appellant's second attempt at a Record was improved over his first, Appellant still included improper arguments and materials, omitted necessary materials, and failed to ensure the pagination on the Index matched the Record itself. These are not mere technicalities and Respondents raising them to the Court is neither vindictive nor a ploy. Unfortunately, Appellant does not seem to believe Respondents when they inform him of errors in his filings, instead insisting that direction to correct

errors come directly from the Court. Thus, Respondents have been forced to come to the Court again and continue to be vilified by Appellant.[1]

CONCLUSION

Accordingly, Respondents respectfully request that Appellant's Motion to Amend the Designation of Matter Included in the Record on Appeal be denied.

Respondents further request that Appellant be instructed that additional argument should not be presented to the Court through letters to the Clerk. Rather, correspondence should made through filings permitted under the South Carolina Appellate Court Rules.

[SIGNATURE PAGE TO FOLLOW]

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[1] Due to Appellant's repeated threats to file additional litigation against Respondents, Respondents PAIC pursued a temporary and permanent injunction in the Richland County Court of Common Pleas to prevent Appellant from initiating additional vexatious litigation. The temporary injunction was recently granted and Appellant's counter claims against Respondents and others were dismissed. See Penn Amer. Ins. Co., et al. v. Hutson, Case No. 2020-CP-40-03810 ("Injunction Action"); **Exhibit B** (Order Grant'g PAIC Mot. Temp. Inj., Dec. 9, 2020); **Exhibit C** (Order Grant'g M&G and Newton Mot. to Dismiss, Dec. 9, 2020); **Exhibit D** (Order Grant'g PAIC Motions to Strike); **Exhibit E** (Order Deny'g Hutson Mot. Temp. Inj., Dec. 9, 2020).

Respectfully submitted,

*s/Christian Stegmaier*________________________
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RESPONDENTS' RETURN TO APPELLANT'S MOTION TO AMEND HIS DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND APPELLANT'S DECEMBER 22, 2020 LETTER TO THE COURT

Columbia, South Carolina
Dated: December 23, 2020

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing RESPONDENTS' RETURN TO APPELLANT'S MOTION TO AMEND HIS DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND APPELLANT'S DECEMBER 22, 2020 LETTER TO THE COURT by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, and via electronic mail, addressed to the following:

MB Hutson/MB Hudson
Post Office Box 2755
Orangeburg, SC 29116
hutson4444@gmail.com
Pro Se Appellant

*s/ Christian Stegmaier*________________________
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ATTORNEYS FOR RESPONDENTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.

Dated: December 23, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C.A. NO. 2018-CP-40-06344

MB HUTSON,)
)
PLAINTIFF,)
)
VERSUS)
)
PENN AMERICA INSURANCE COMPANY, ET AL,)
)
DEFENDANTS.)

****
MOTION HEARING TRANSCRIPT
****

A MOTION HEARING IN THE ABOVE ENTITLED CASE WAS HELD ON THE 26TH DAY OF JUNE, 2019, COMMENCING AT THE HOUR OF 9:51 A.M., BEFORE THE HONORABLE JUDGE MICHAEL G. NETTLES AT THE RICHLAND COUNTY COURTHOUSE IN COLUMBIA, SOUTH CAROLINA.

REPORTED BY: KAREN E. HOLLEY, CVR-M
OFFICIAL STATE COURT REPORTER

APPEARANCES:

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

EXHIBIT B

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Penn America Insurance Company and Global Indemnity Group, LLC,	)	C.A. No: 2020-CP-40-03810
Plaintiffs/Counter-Defendants,	)	
vs.	)	**ORDER GRANTING PLAINTIFFS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, LLC'S MOTION FOR TEMPORARY INJUNCTION**
Morris Beach Hutson a/k/a M.B. Hutson,	)	
Defendant/Counter-Plaintiff.	)	
Morris Beach Hutson a/k/a M.B. Hutson	)	
Third-Party Plaintiff,	)	
vs.	)	
Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,	)	
Third-Party Defendants.	)	

This matter came before the Court upon Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction, as well as other motions. A hearing on the motions was held on October 15, 2020, before the Honorable Robert E. Hood. Plaintiffs/Counter-Defendants Penn America Insurance Company ("PAIC") and Global Indemnity Group, LLC ("Global") were represented by Christian Stegmaier, Esquire. Mr. Stegmaier also represented himself and Collins & Lacy P.C. as Third-Party Defendants. Third-Party Defendants Timothy J. Newton, Esq. and Murphy & Grantland, P.A. were represented by John Grantland, Esquire and Timothy Newton, Esquire. Defendant/Counter-Plaintiff/Third-Party Plaintiff Morris

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Beach Hutson a/k/a M.B. Hutson ("Hutson") appeared *pro se*. Having considered the written filings and exhibits, the oral presentations at the hearing on October 15, 2020, and the applicable law, this Court grants Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction. The Court presents its findings and conclusions below.

PROCEDURAL BACKGROUND

Plaintiffs PAIC and Global initiated the instant matter with the filing of a Complaint and Motion for Temporary Injunction on August 10, 2020. Defendant Hutson responded with the filing of his own Counterclaims and Third-Party Claims, a partial Answer to the Complaint, and his own Motion for Temporary Injunction. The Plaintiffs, Counter-Defendants, and Third-Party Defendants then filed their respective motions to stay, strike, and dismiss Hutson's filings.

The following motions were heard in an in-person hearing at the Richland County Judicial Center on October 15, 2020:

1. Plaintiffs' Motion for Temporary Injunction against Hutson;
2. Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants;
3. Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment;
4. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Injunction;
5. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Strike Portions of Hutson's "Answer"; and
6. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Strike Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint."

This Order addresses the first motion, Plaintiffs' Motion for Temporary Injunction against

Hutson.[1]

LEGAL STANDARD

"A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010) (holding that there is no additional "balancing the equities" requirement). When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present "a fair question to raise as to the existence of such a right." Williams v. Jones, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912). The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003) (citing Transcon. Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969)). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) ("[I]t would have been improper for the hearing judge who issued the temporary injunction to make a finding upon the facts in such a manner as to affect the merits of the case.").

[1] Contemporaneous with the entry of the instant Order, the Court is entering Orders denying Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants; granting Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment; and granting Plaintiff's three motions to strike. The Court's findings and conclusions in these additional Orders are incorporated herein by reference.

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FINDINGS OF FACT

The documentation provided by the parties reflects that in December 2010, Hutson entered into a Membership Interest Purchase Agreement with Richard U. Clark, Jimmy S. Lovell, James Thigpen, and The Big Water Resort, LLC related to the outstanding membership interests in The Big Water Resort, LLC. Contemporaneously therewith, Hutson also entered into a Lease Purchase Agreement with TLC Holdings, LLC ("TLC"), Richard U. Clark, Jimmy S. Lovell and James Thigpen related to the purchase of property in Clarendon County, South Carolina, including a campground known as "Big Water Resort," a convenience store facility and adjacent land known as the "Big Water Country Store and Restaurant," and a 57.81 acre tract known as "Roger's Tract."

In December 2011, TLC filed an ejectment action against Hutson alleging he defaulted on the terms of the Lease Purchase Agreement. TLC Holdings, LLC v. Hutson, Case No. 2011-CP-14-602 (Clarendon Cnty. Ct. Comm. Pleas) ("the Ejectment Action"). Hutson filed counterclaims against TLC in the Ejectment Action in which he asserted that various misrepresentations and material omissions were made with respect to the Subject Property and that TLC and its members interfered with the Property's development and operation. The parties agreed to settle the Ejectment Action, and the Settlement Agreement was adopted into a Consent Order filed April 13, 2012.

Following Hutson's default under the terms of the 2012 Settlement Agreement and Consent Order, TLC sought to evict Hutson from the Big Water Resort property. Following a hearing, the Honorable George C. James, Jr., entered an order on March 21, 2014, which enforced the terms of the Consent Order and Settlement Agreement. Judge James found that Hutson's claims that TLC "made 'verbal assurances' to Hutson that were incorrect, or that [TLC] failed to make 'important disclosures' to him" were the same claims alleged in the 2012 action and resolved pursuant to the 2012 Settlement Agreement and Consent Order.

Global is the parent company of PAIC, a member of Penn-America Group, which offers specialty property and casualty products designed for small businesses. PAIC issued commercial general liability (CGL) policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured ("the Policy"). The Policy was in effect from October 16, 2013 through April 7, 2014. Hutson was the principal in BWR, Inc., a now defunct corporation formerly organized and existing under the laws of the State of South Carolina. Pursuant to the Policy, PAIC provided a defense and indemnity to Hutson in two lawsuits, known as the Class Action and the Defamation Action. Big Water Resort, LLC, *et al.* v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB (D.S.C.) ("the Class Action"); TLC Holdings, LLC, et al. v. Hutson, Case No. 2015-CP-14-0615 (Clarendon Cnty. Ct. Comm. Pleas) ("the Defamation Action").

The Class Action lawsuit was brought in federal court by a group of Big Water Resort campground members against TLC and its members. TLC then asserted third-party claims for equitable indemnification against Hutson. Hutson also asserted counterclaims against TLC. TLC and Hutson filed cross motions for summary judgment , which were ruled upon in favor of TLC on May 20, 2016. Federal District Judge David C. Norton later also entered an Order granting sanctions against Hutson, explaining:

> Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by third-party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against third-party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate under the court's inherent power.

Class Action, Norton Order Granting Sanctions, Oct. 6, 2017.

The Defamation Action was instituted by TLC in state court on December 7, 2015. TLC's

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claims related to statements made by Hutson in the postcard he sent to campground members and certain statements Hutson made to the attorney who represented the campground members in the Class Action. Hutson raised identical counterclaims against TLC in the Defamation Action as he raised in the Class Action, which were also disposed of on summary judgment by the Honorable R. Ferrell Cothran, Jr. TLC's claims in the Defamation Action proceeded to a jury trial. The jury returned a verdict of Three Million Five Hundred Thousand Dollars ($3,500,000) on January 26, 2018. The case was mediated during appeal and resolved.

PAIC retained Murphy & Grantland, P.A. as coverage counsel and instituted a coverage action on June 14, 2016. Penn-America Insurance Company v. BWR, Inc., et al., C/A: 2:16-cv-01943-DCN (D.S.C.) ("the Coverage Action"). On or about September 16, 2016, Hutson entered into a Settlement Agreement and Release of Certain Claims with PAIC. PAIC paid Hutson the sum of Nine Thousand Five Hundred Dollars ($9,500.00) as consideration for the Settlement Agreement and Release in the Coverage Action.

Following resolution of both lawsuits without any personal liability to Hutson, Hutson initiated a lawsuit against PAIC, Global, and their coverage counsel, Timothy Newton and J.R. Murphy, on December 5, 2018. Hutson v. Penn America Ins. Co., et al., Case No. 2018-CP-40-06344 (Richland Cnty. Comm. Pleas) ("the Bad Faith Action"). Following a hearing before the Honorable Michael G. Nettles, the court granted summary judgment in favor of the defendants on all of Hutson's claims. Huston has appealed from those Orders, and the appeal is currently pending before the South Carolina Court of Appeals. Hutson v. Penn America Inc. Co., et al., Appellate Case No. 2019-001488 ("the Bad Faith Appeal").

Hutson has also separately sued attorney Paul Weissenstein, who represented him in the 2012 Ejectment Action and resulting Settlement Agreement. Hutson v. Weissenstein, Case No.

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2018-CP-43-1583 (Sumter Cnty. Ct. Comm. Pleas) ("the Weissenstein Malpractice Action"). On February 25, 2019, the Honorable Kristi Curtis granted summary judgment in favor of Weissenstein based upon both the statute of limitations and the merits. Hutson appealed from that Order and the appeal remains pending. Hutson v. Weissenstein, Appellate Case No. 2019-873 (S.C. Ct. App.) ("the Weissenstein Appeal"). Hutson also sued attorneys Stephen "Chip" Burn and Sarah Gutherie and Burn Law Firm, LLC related to advice they purportedly gave him in the Ejectment Action. On April 10, 2019, the Honorable Frank R. Addy, Jr. entered an Order of Dismissal, finding that Hutson failed to cure the lack of expert affidavit or establish that such an affidavit was not necessary. Hutson did not appeal from the Order of Dismissal.

Plaintiffs have provided copies of numerous e-mails from Hutson to counsel for PAIC and Global, Newton, Murphy, and others threatening to bring a new lawsuit against them and claiming that they are all co-conspirators in the original fraud he claims was perpetrated by TLC in the land deal and 2012 settlement. On June 21 and 22, 2020, Huston told counsel for PAIC, Christian Stegmaier that he was "having to seriously consider bringing a[n] immediately separate action against you for participating with Tim Newton and JR Murphy in extrinsic fraud upon the Appeals Court and the lower Court." He added: "I plan to serve the insurance companies copies of the complaint as well as serving you." On July 6, 2020, Hutson wrote: "If I don't hear from you within the next (5) business days, I will proceed with a complaint in State or Federal Court against you." On July 27, 2020, Hutson accused the Plaintiffs and Third-Party Defendants of "concealing extrinsic fraud" and stated: "I plan to take these immoral actions to court rightaway [sic]. I have an abundance of evidence showing my damages and mental depression and stress that you have caused me intentionally and continue to cause on a daily basis. All are warned."

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On August 8, 2020, two days before Plaintiffs initiated the instant action, Hutson wrote: "Have no choice but to move forward with a new needed complaint, 'Defamation by way of Extrinsic Fraud' naming Christian Stedmaier [sic], Tim Newton, JR Murphy, Penn America and Global. Soon I will file the same 'Defamation by way of Extrinsic Fraud' against Turner Padgett and Tom Harper." Then, following service with the instant Complaint and Motion for Preliminary Injunction, Hutson responded by filing counterclaims and third-party claims.

At the hearing before this Court, Hutson was provided ample opportunity to explain the nature of the fraud he is alleging against Plaintiffs and the Third-Party Defendants and how it differs what has been asserted in the past, including before Judge Nettles. Hutson pointed to two pieces of correspondence he received from Newton, who was acting in his capacity as coverage counsel for PAIC at the time. They include an August 13, 2018 e-mail and a November 8, 2018 letter. The e-mail states that, based on Huston's allegations, "there *might possibly* be extrinsic fraud on the court" but advises that Newton cannot provide legal advice or representation to Hutson regarding the same. (emphasis added). The November 8, 2018 letter denies that PAIC or its counsel has "acknowledged the existence of fraud upon the court." While Hutson claims that the two letters are inconsistent, the Court disagrees. The August 13 e-mail did not acknowledge the existence of fraud—it provided that fraud "might possibly" exist. There is no evidence that Newton had actual knowledge of any fraud or perpetrated any fraud himself.

CONCLUSIONS OF LAW

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). In determining whether a preliminary injunction is proper, the Court is not ruling on the merits of the permanent injunction and request to classify Hutson as a vexatious

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litigant. Rather, the Court evaluates whether Plaintiffs will suffer immediate, irreparable harm without the injunction, the likelihood of Plaintiffs' success on the merits, and whether there is an adequate remedy at law. See id.; Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). In doing so, the Court examines the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

A. Immediate and Irreparable Harm to Plaintiffs

The Court agrees that Plaintiffs will suffer irreparable harm associated with the time and costs they will incur in defending against further litigation by Hutson and they cannot be adequately compensated with monetary damages in light of Hutson's limited financial resources. Hutson has filed numerous motions in past litigation in state and federal court, as well as in the pending appeal, which impose a substantial burden of time and money for preparation of responses. A lack of response risks that the Court interpret the motion as unopposed. The issuance of this preliminary injunction will further preserve the status quo while the Court of Appeals considers the rulings on summary judgment by Judge Nettles.

B. Plaintiffs' Likelihood of Success on Merits

In evaluating this element, the court must determine only the *likelihood* of whether the Plaintiff will prevail on the merits based on the allegations in its complaint. See Compton v. S.C. Dep't of Corr., 392 S.C. at 367, 709 S.E.2d at 642. The Complaint alleges that Hutson is a vexatious litigant and seeks a permanent injunction against the initiation of *pro se* litigation against Plaintiffs or any of their officers, agents, servants, employees, attorneys, affiliates, successors and assigns, without first obtaining leave of Court. See Ramantanin v. Poulos, 240 S.C. 13, 25, 124 S.E.2d 611,

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617 (1962) (recognizing a court of equity's power to prevent continued and vexatious litigation, but that there must be a showing of the pendency of other litigation between the parties or the threat of further litigation to serve as the basis for issuance of the injunction). Here, Plaintiffs have set forth a prima facie case for their request for injunctive relief, including the pendency of other litigation between the parties—the current appeal in the South Carolina Court of Appeals—and multiple threats of further litigation by Hutson, further evidenced by his counterclaims in this matter.

C. Lack of Adequate Remedy at Law

As discussed *supra*, the Court agrees that Rule 11 sanctions and the Frivolous Proceedings statute do not provide an adequate remedy at law because Hutson does not have the financial means to pay any monetary award to Plaintiffs.

D. Posting of Bond

Rule 65(c), SCRCP, provides that:

> Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

AJG Holdings, LLC v. Dunn, 382 S.C. 43, 49, 674 S.E.2d 505, 508 (Ct. App. 2009). In Atwood Agency v. Black, our Supreme Court ruled that the circuit court erred in requiring only a nominal security bond of $250, because it erroneously assumed the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper. 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007).

Here, the injunctive relief requested is not aimed at preventing or allowing commercial activity. Rather, its granting limits Hutson's *pro se* access to the state court. However, the fraud allegations Hutson attempts to raise have already been raised before the Honorable Michael G.

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Nettles. Hutson remains free to represent himself in the currently pending appeal from Judge Nettles' Order. Thus, even if this preliminary injunction is found to be in error, there will be no significant costs or damages incurred by Hutson. Nonetheless, Rule 65 requires the giving of security in a sum deemed proper by the Court.

CONCLUSION

IT IS ORDERED Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction is hereby **GRANTED**. Unless and until Appellate Case No. 2019-001488 is concluded, Defendant Morris Beach Hutson a/k/a M.B. Hutson is prohibited from filing any further *pro se* litigation in state court in South Carolina (a) against Penn America Insurance Company, Global Indemnity Group, LLC, Collins & Lacy, P.C., Christian Stegmaier, Laura Baer, Murphy & Grantland, P.A., John Robert "J.R." Murphy, John Grantland, and/or Timothy Newton, or (b) related to the claims already ruled upon by the Honorable Michael G. Nettles.[2]

IT IS FURTHER ORDERED, pursuant to Rule 65(c), Plaintiffs are directed to file proof of bond, in the amount of Five Thousand and no/100 ($5,000.00) Dollars within five business days of entry of this Order. The bond shall serve as security for all claims with respect to this Preliminary Injunction, and any additional injunctive relief ordered by the Court in this action.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

[2] This injunction does not prevent Huston from continuing to pursue his current appeal from Judge Nettles' Order granting summary judgment in Appellate Case No. 2019-001488.

Richland Common Pleas

Case Caption: Penn America Insurance Company , plaintiff, et al vs Morris Beach Hutson , defendant, et al

Case Number: 2020CP4003810

Type: Order/Temporary Injunction

So Ordered

s/ R.E. Hood #2164

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EXHIBIT C

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STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND | CIVIL ACTION NO: 2020-CP-40-03810

Penn America Insurance Company and Global Indemnity Group, LLC,

Plaintiffs,

v.

Morris Beach Hutson a/k/a M.B. Hutson,

Defendant.

Morris Beach Hutson a/k/a M.B. Hutson,

Defendant/Third-Party Plaintiff

v.

Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,

Third-Party Defendants.

ORDER GRANTING THIRD-PARTY DEFENDANTS TIMOTHY J. NEWTON AND MURPHY & GRANTLAND, P.A.'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

This matter is before me upon a Motion to Dismiss, or, in the alternative, Motion for Summary Judgment by Third-Party Defendants Timothy J. Newton and Murphy & Grantland, P.A. (hereinafter collectively "Murphy & Grantland"). This motion was made pursuant to Rules 12(b)(1), (6) and (8) and 56 of the South Carolina Rules of Civil Procedure. This matter was heard on October 15, 2020 along with several other motions filed by Plaintiffs and Defendant/Third-Party Claimant. John M. Grantland and Newton appeared for Murphy & Grantland. After careful consideration of all arguments and materials submitted for my review, I find that Murphy & Grantland's Motion should be granted. [1]

[1] The Court is entering several Orders related to motions filed by other parties contemporaneously with this Order. The Court's findings and conclusions from the Orders granting Plaintiffs' Motion for Temporary Injunction and Motions to Strike, as well as the Order denying Defendant's Motion, are incorporated by reference herein.

This action relates to matters that have already been litigated repeatedly in prior actions. The common thread throughout the litigation is allegations of fraud by Defendant/Third-Party Plaintiff, Morris Beach Hutson a/k/a M.B. Hutson. The genesis of the litigation was a land deal in Clarendon County involving a campground known as Big Water Resort. In 2010, Hutson entered into a Lease Purchase Agreement with a non-party to this action, TLC Holdings, LLC, and its principals (hereinafter collectively "TLC"). Hutson entered into this transaction with full knowledge that a TLC-related entity, Big Water Resort, LLC, had sold lifetime memberships in the Big Water Resort campground that was being operated on some of the property. [2] As part of this transaction, Hutson became the sole shareholder in Big Water Resort, LLC. Through these transactions, Hutson obtained both a right to develop and sell unimproved portions of the property and a duty to protect the interests of the campground members.

Hutson breached the Lease Purchase Agreement and TLC sued to evict him. [3] Hutson retained counsel to defend him and to prosecute certain counterclaims against TLC. Those matters were resolved in a Settlement Agreement and adopted into a Consent Order that was filed on April 13, 2012. Hutson's attorney for that transaction was Paul Weissenstein, Jr., who signed the Consent Order. The 2012 Settlement Agreement contained a conditional release providing that if Hutson breached the terms of the Settlement Agreement, he would be deemed to have released TLC for all claims he may have had against them prior to his eviction.

[2] Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620, at *13 n.5 (D.S.C. Apr. 5, 2016), report and recommendation adopted, No. 2:14-CV-01583-DCN, 2016 WL 2935891 at *7 (D.S.C. May 20, 2016) ("There is no dispute that Hutson knew about the 'life time' membership agreements when he purchased BWR.").

[3] TLC Holdings, LLC v. M.B. Hudson, Civ. Action No. 2011-CP-14-00602 (Clarendon County Comm. Pl. filed Dec. 14, 2011) (hereinafter "the Ejectment Action").

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Hutson breached the 2012 Settlement Agreement. Hutson again retained counsel to represent him for the hearing. By Order filed March 21, 2014, Judge (now Justice) George C. James, Jr. found that Hutson's breach operated as a release of Hutson's claims against TLC. [4] Based on this ruling, Hutson's counterclaims against TLC in subsequent actions were dismissed under the doctrine of *res judicata*.

When he was served with his eviction notice, Hutson sent a postcard to the campground members that led to two subsequent actions. The campground members sued TLC in federal court, and TLC asserted third-party claims against Hutson in that action. [5] TLC also sued Hutson separately in state court for defamation. [6] Hutson filed counterclaims against TLC in both actions.

TLC's claims against Hutson were tendered to Plaintiff Penn America Insurance Company ("PAIC"). In early 2016, PAIC accepted the tender under reservation of rights and began defending Hutson in both suits. However, PAIC denied Hutson's request for counsel to represent him in his counterclaims against TLC.

PAIC filed a declaratory judgment to adjudicate its rights under the policy it issued to one of Hutson's companies. [7] PAIC retained Murphy & Grantland as coverage counsel for its declaratory judgment action against Hutson. On September 16, 2016, Hutson entered into a

[4] Reed, 2016 WL 7435620 at *14 ("The Release plainly releases all claims against [TLC] for claims that arose on December 11, 2013 or before."). The 2012 Settlement Agreement and Consent Order, as well as Judge James' Order, were filed in the Ejectment Action.

[5] Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-1583-DCN-MGB (D.S.C. filed Apr. 22, 2014) (hereinafter "the Class Action").

[6] TLC Holdings, LLC v. Hutson, Civ. Action No. 2015-CP-14-00615 (Clarendon County Comm. Pl. filed Dec. 7, 2015) (hereinafter "the Defamation Action").

[7] Penn-America Ins. Co. v. BWR, Inc., Civ. Action No. 2:16-cv-01943-DCN (D.S.C. filed June 14, 2016) (hereinafter "the Coverage Action").

Settlement Agreement in which he released all claims against PAIC and its counsel related to his claims for coverage under the policy.

Hutson continued to maintain and prosecute his counterclaims against TLC on a *pro se* basis. Hutson's counterclaims were dismissed in both the Class Action and the Defamation Action upon findings that Judge James' Order in the Ejectment Action was dispositive.[8] After Hutson's counterclaims were dismissed, District Judge David C. Norton granted TLC's Motion for Sanctions against Hutson in the Class Action.[9] Judge Norton found that "Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden [TLC], and there is no indication that he intends to cease."[10] Judge Norton noted that Hutson "again makes reference to the alleged fraud by [TLC] in obtaining the settlement agreement and the order signed by Judge James in the prior state court litigation. Hutson has made these allegations throughout the course of this litigation. He has never, however, specified what the fraud is or submitted evidence of it."[11] Judge Norton concluded that:

> Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by [TLC], and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against [TLC]. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate . . . .[12]

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[8] Reed, 2016 WL 2935891 at *5-*8; Order Granting Pl's. Mot. for Summ. J. as to Def's. Countercls., TLC Holdings, LLC, et al. v. M.B. Hutson, Civ. Action No. 2015-CP-14-00615 (Clarendon County Comm. Pl. Mar. 2, 2017).

[9] Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-cv-1583-DCN, 2017 WL 4480195 (D.S.C. Oct. 6, 2017).

[10] Id.

[11] Id.

[12] Id. at *2-*3.

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The Defamation action was tried in January 2018, and the jury returned a verdict for TLC and against Hutson in the amount of $3,500,000. PAIC settled TLC's claims against Hutson in the Class Action in early 2018 and their claims in the Defamation action in December 2018.

In August 2018, while negotiations to settle the Defamation suit were ongoing, Hutson made certain representations to Murphy & Grantland in an effort to induce PAIC to retain counsel for him to attempt to set aside the conditional release in the 2012 Settlement. Hutson's proposed theory was fraud upon the court. Hutson pointed out that the 2012 Settlement contemplated a condominium development on the campground property. He also stated that he had recently learned that TLC had withheld from him evidence that all of the property he purchased was subject to the lifetime campground membership agreements. Hutson provided an expert affidavit he intended to use in a forthcoming suit against Weissenstein, stated that the expert testimony would support his claim of fraud, and threatened litigation against PAIC based upon that expert's testimony. Third-Party Defendant Newton acknowledged Hutson's possible claim for fraud upon the court and provided corroborating evidence in an e-mail dated August 13, 2018. However, PAIC declined to provide counsel for Hutson with respect to any affirmative claims Hutson might assert against TLC.

Hutson subsequently sued Paul Weissenstein, the attorney who represented him for purposes of the 2012 Settlement. On February 25, 2019, Judge Kristi F. Curtis granted Weissenstein's motion for summary judgment. [13] Judge Curtis found that Hutson could not establish fraud because he knew about the lifetime campground memberships before he entered into the 2010 lease-purchase of the Big Water Resort property. [14] On November 12, 2020, the

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[13] Order Granting Def's. Mot. for Summ. J., MB Hutson v. Paul Weissenstein, Civ. Action No. 2018-CP-43-01583 (Sumter County Comm. Pl. Feb. 25, 2019).
[14] Id. at 9-12.

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South Carolina Court of Appeals dismissed Hutson's appeal from Judge Curtis' Order for failure to prosecute. [15]

Hutson used the August 13, 2018 e-mail as the basis for yet another lawsuit that he filed the day after he was notified of the settlement of TLC's $3,500,000 verdict against him in the Defamation Action. [16] Hutson alleged various causes of action against Newton and J.R. Murphy of Murphy & Grantland. These claims were all based upon a theory that Murphy & Grantland knew about fraud committed against Hutson by TLC in the Ejectment Action and failed to report it to a court. Hutson's claims were heard and on July 18, 2019, Judge Michael G. Nettles filed an Order granting summary judgment in favor of Murphy and Newton. [17] Hutson's appeal from that Order is currently pending before the Court of Appeals. [18]

While Hutson's Bad Faith Action against PAIC was pending on appeal, Hutson filed an "Emergency Motion to Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of Appeals and its Judges. [19] Hutson claimed in numerous court filings and threatening e-mails that Murphy & Grantland and current counsel for PAIC are continuing to commit fraud upon the court by failing to report allegedly known fraud perpetrated against Hutson by TLC. The Court of Appeals denied Hutson's motion and other similar motions by Order filed July 28, 2020.

PAIC then filed this action seeking injunctive relief to restrain Hutson from continuing his pattern of vexatious litigation and threats of litigation against PAIC and its current and former

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[15] Appellate Case No. 2019-000873.

[16] MB Hutson v. Penn America Ins. Co., Civ. Action No. 2018-CP-40-06344 (Richland County Comm. Pl. filed Dec. 5, 2018) (hereinafter "the Bad Faith Action").

[17] Id. Murphy & Grantland had no involvement whatsoever in the Ejectment Action.

[18] Appellate Case No. 2019-001488.

[19] Id. (filed July 6, 2020).

counsel. Hutson responded by filing third-party claims against Murphy & Grantland. Hutson's various causes of action have precisely the same factual basis as the claims upon which Judge Nettles granted summary judgment. Hutson again alleged that Murphy & Grantland knew of extrinsic fraud upon the court and failed to report it. The evidentiary grounds for Hutson's claims in this action are the same August 13, 2018 e-mail and proposed counterclaim from the Defamation action that he raised in the Bad Faith Action. Hutson even filed copies of his briefs and motions from the pending appeal of the Bad Faith Action as the basis for his third-party claims against Murphy & Grantland in this case.

Murphy & Grantland moved to dismiss Hutson's third-party claims based upon Rule 12(b)(8) of the South Carolina Rules of Civil Procedure and the doctrine of *res judicata*. Murphy & Grantland also requested dismissal based upon Hutson's vexatious litigation.

At the hearing, Hutson made the same arguments that he previously raised to Judge Nettles in the Bad Faith Action. Hutson argued that Newton admitted he knew of fraud upon the court in the August 13, 2018 e-mail, but then contradicted himself in a letter responding to Hutson's $500,000 settlement demand to PAIC. Newton contended that the August 13, 2018 e-mail only alerted Hutson to the potential for a fraud claim, it does not reflect knowledge of fraud. Newton's August 13, 2018 e-mail alerted Hutson to certain evidence in PAIC's possession that "might possibly" support a claim for fraud upon the court. Newton's November 8, 2018 letter states that neither PAIC nor its counsel ever acknowledged the existence of fraud upon the court, but they did recognize that certain evidence raised concerns that Hutson has a right to investigate and possibly pursue. After examining the materials Hutson provided, I am satisfied that Murphy & Grantland is not committing fraud upon the court in this action.

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Moreover, Hutson made precisely the same argument to Judge Nettles.[20] The same issues are currently pending before the Court of Appeals in the Bad Faith Action. The Order in the Bad Faith Action is consistent with several other courts orders holding that Hutson cannot prove fraud because he was aware of the lifetime campground memberships before he ever entered into the lease-purchase transaction for the Big Water Resort property.[21]

I find that Hutson's third-party claims against Murphy & Grantland in this action are subject to dismissal because Hutson's same claims were raised in the Bad Faith Action. Claims are subject to dismissal when another action is pending involving the same parties and the same claims. Rule 12(b)(8), SCRCP. "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Litigants are barred from raising issues that were adjudicated in the former suit or that might have been raised in the former suit. Id. Judge Nettles' Order granting summary judgment has preclusive effect unless and until reversed on appeal. RFT Mgmt. Co., LLC v. Gilbert, Civ. Action No. 8:10-02503-HFF, 2011 WL 13142633 at *4 (D.S.C. signed May 24, 2011); Dawson v. State Law Enforcement Div., Civ. Action No. 3:91-1403-17, 1992 WL 208967 (D.S.C. Apr. 6, 1992); Northern Va. Law Sch. v. Jones, No. 88-1781, 883 F.2d 69 (4th Cir. 1989); Restatement (Second) of Judgments § 13 (June 2020 Update). Hutson has also released these claims.

Furthermore, courts have the inherent authority and the duty to protect themselves and other litigants from vexatious and harassing litigation. See Ramantanin v. Poulos, 240 S.C. 13,

[20] See Order filed July 18, 2019 in the Bad Faith Action, at 3-4.

[21] Id. at 21; see nn. 2, 11, and 13 and accompanying text, infra.

25, 124 S.E.2d 611, 617 (1962). Parties are not allowed to maintain vexatious, frivolous, and malicious claims. Id.

For the reasons set forth above, I find that Murphy & Grantland's Motion to Dismiss, or, in the alternative, Motion for Summary Judgment should be granted.

It is hereby

ORDERED, ADJUDGED and DECREED that judgment be entered for Third-Party Defendants Timothy J. Newton and Murphy & Grantland, P.A., that Hutson's claims against them in this action should be dismissed, and that Newton and Murphy & Grantland, P.A. and should be dismissed as parties from this action.

IT IS SO ORDERED.

____
The Honorable Robert E. Hood
Presiding Judge of the Fifth Circuit Court

Columbia, South Carolina
Date:____________________

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Richland Common Pleas

Case Caption:	Penn America Insurance Company , plaintiff, et al vs Morris Beach Hutson , defendant, et al
Case Number:	2020CP4003810
Type:	Order/Other

So Ordered

s/ R.E. Hood #2164

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EXHIBIT D

ELECTRONICALLY FILED - 2020 Dec 09 7:12 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Penn America Insurance Company and Global Indemnity Group, LLC,	)	C.A. No: 2020-CP-40-03810
Plaintiffs/Counter-Defendants,	)	
vs.	)	**ORDER GRANTING PLAINTIFFS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, LLC, CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY P.C.'S MOTIONS TO STRIKE**
Morris Beach Hutson a/k/a M.B. Hutson,	)	
Defendant/Counter-Plaintiff.	)	
Morris Beach Hutson a/k/a M.B. Hutson	)	
Third-Party Plaintiff,	)	
vs.	)	
Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,	)	
Third-Party Defendants.	)	

This matter came before the Court upon various motions, including: (1) Penn America, Global, Stegmaier, and Collins & Lacy's Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Injunction; (2) Penn America, Global, Stegmaier, and Collins & Lacy's Motion to Strike Portions of Hutson's "Answer"; and (3) Penn America, Global, Stegmaier, and Collins & Lacy's Amended Motion to Strike Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint." A hearing on the motions was held on October 15, 2020, before the Honorable Robert E. Hood. Plaintiffs/Counter-Defendants Penn America Insurance Company ("PAIC") and Global Indemnity Group, LLC

("Global") were represented by Christian Stegmaier, Esquire. Mr. Stegmaier also represented himself and Collins & Lacy P.C. as Third-Party Defendants. Third-Party Defendants Timothy J. Newton, Esq. and Murphy & Grantland, P.A. were represented by John Grantland, Esquire and Timothy Newton, Esquire. Defendant/Counter-Plaintiff/Third-Party Plaintiff Morris Beach Hutson a/k/a M.B. Hutson ("Hutson") appeared *pro se*.

Having considered the written filings and exhibits, the arguments heard at the hearing on October 15, 2020, and the applicable law, this Court **GRANTS** the above-referenced motions to strike. [1] The Court presents its findings and conclusions below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs PAIC and Global initiated the instant matter with the filing of a Complaint and Motion for Temporary Injunction on August 10, 2020. Defendant Hutson responded with the filing of his own Counterclaims and Third-Party Claims, a partial Answer to the Complaint, and his own Motion for Temporary Injunction. The Plaintiffs, Counter-Defendants, and Third-Party Defendants then filed their respective motions to stay, strike, and dismiss Hutson's filings.

A motion to strike is governed by Rule 12(f) of the South Carolina Rules of Civil Procedure which provides:

> Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

[1] Contemporaneous with the entry of the instant Order, the Court is entering Orders granting Plaintiffs' Motion for Preliminary Injunction; denying Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants; and granting Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment. The Court's findings and conclusions in these additional Orders are incorporated herein by reference.

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Rule 12(f), SCRCP.

A. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims and Third-Party Claims

Throughout the "Amended Cross-Complaint," Hutson accuses the Counter-Defendants and Third-Party Defendants of engaging in a conspiracy to commit fraud upon the Courts of this State. He purports to present the following causes of action against all Counter-Defendants and Third-Party Defendants: Count One: Fraud and Extrinsic Fraud; Count Two: Document Fraud; Count Three: Defamation by Extrinsic Fraud; and Count Four: Unfair and Deceptive Trade Practice. Within Count Three, Hutson alleges obstruction of justice and seeks $3.5 Million in damages.

At the hearing before this Court, Hutson was provided ample opportunity to explain the nature of the fraud he is alleging against Plaintiffs and the Third-Party Defendants and how it differs from what has been asserted in the past, including before Judge Nettles. Hutson pointed to two pieces of correspondence he received from Newton, who was acting in his capacity as coverage counsel for PAIC at the time. They include an August 13, 2018 e-mail and a November 8, 2018 letter. The e-mail states that, based on Huston's allegations, "there *might possibly* be extrinsic fraud on the court" but advises that Newton cannot provide legal advice or representation to Hutson regarding the same. (emphasis added). The November 8, 2018 letter denies that PAIC or its counsel has "acknowledged the existence of fraud upon the court." While Hutson claims that the two letters are inconsistent, the Court disagrees. The August 13 e-mail did not acknowledge the existence of fraud—it provided that fraud "might possibly" exist. There is no evidence that Newton had actual knowledge of any fraud or perpetrated any fraud himself. Moreover, there is nothing new about Hutson's claims that distinguish them from the claims he previously raised in Hutson v. Penn America Ins. Co., et al., Case No. 2018-CP-40-06344 (Richland Cnty. Comm. Pleas).

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After reviewing Hutson's claims, they are redundant, immaterial, impertinent and scandalous. Accordingly, the Court Strikes Huston's Counterclaims and Third-Party Claims against the Counter-Defendants, Christian Stegmaier, and Collins & Lacy, P.C.

B. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Strike Portions of Hutson's "Answer"

Rule 8 of the South Carolina Rules of Civil Procedure provides the general rules of pleading. Specifically, Rule 8(b) provides that a party must admit or deny the averments upon which the adverse party relies, and provides guidance for when a party lacks knowledge or information sufficient to form a belief as to the truth of an averment or a party seeks to admit in part and deny in part. Rule 8(b), SCRCP. Rule 8(d) further provides that "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Rule 8(d), SCRCP.

Hutson's Answer fails to respond to paragraphs 1 through 8 and 16 through 111 of the Complaint. Accordingly, those allegations of the Complaint are deemed admitted. See Rule 8(d), SCRCP. Hutson further admits, without reservation, the allegations of paragraph 10 of the Complaint. Plaintiffs' Motion to Strike argues that the remainder of Hutson's Answer fails to comport with the Rules of Civil Procedure by either denying facts based upon a contention that additional information is absent from the averment of the Complaint or by making assertions non-responsive to the Complaint. The Court agrees. Accordingly, the Court strikes paragraphs 1, 3 through 9, and 11 thorough 13 of Huston's Answer to the Third-Party Complaint, as well as the textual paragraphs on pages 16 and 17 of the Answer.

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C. PAIC, Global, Stegmaier, and Collins & Lacy's Amended Motion to Strike Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint"

Plaintiff filed a "Notice of Extrinsic Fraud" and a "Memorandum to Defendant's Amended Cross Complaint," which Plaintiffs argue are not proper pleadings. The "Notice" states that "fraud is presently being perpetrated upon the Honorable Common Pleas and the Court of Appeals, its Judges, and on this Defendant by all the Plaintiffs/Third Party Defendants," who he then lists. Hutson's "Memorandum" cites a portion of Rule 3.3 of the Rules of Professional Conduct and portions of Newton's August 13, 2018 e-mail. Hutson then repeats his allegations that PAIC, Global, Stegmaier, Collins & Lacy, Newton, and Murphy & Grantland all knew about TLC Holding's fraud, are illegally protecting one another, and failed to disclose the fraud to any court. Hutson's "Memorandum" further cites to 77 paragraphs that comprised his *pro se* counterclaims filed by him and which were ultimately resolved against him on summary judgment in the prior Defamation Action, Case No. 2015-CP-14-0615.

Hutson's "Notice" and "Memorandum," which continue to make malicious allegations of criminal and professional misconduct, are impertinent and scandalous. Moreover, neither filing is a proper pleading, motion, or memorandum under our Rules. Accordingly, the Court Strikes Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint."

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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Richland Common Pleas

Case Caption: Penn America Insurance Company , plaintiff, et al vs Morris Beach Hutson , defendant, et al

Case Number: 2020CP4003810

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

EXHIBIT E

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Penn America Insurance Company and Global Indemnity Group, LLC,	)	C.A. No: 2020-CP-40-03810
Plaintiffs/Counter-Defendants,	)	
vs.	)	**ORDER DENYING THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION**
Morris Beach Hutson a/k/a M.B. Hutson,	)	
Defendant/Counter-Plaintiff.	)	
Morris Beach Hutson a/k/a M.B. Hutson	)	
Third-Party Plaintiff,	)	
vs.	)	
Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,	)	
Third-Party Defendants.	)	

This matter came before the Court upon Defendant/Counter-Plaintiff Morris Beach Hutson a/k/a M.B. Hutson ("Hutson's) Motion for Temporary Injunction. A hearing on the motion was held on October 15, 2020, before the Honorable Robert E. Hood. Having reviewed and considered the written filings and exhibits, the oral arguments of the parties, and the applicable law, this Court finds that Hutson has not demonstrated that without such relief he will suffer irreparable harm, that he has a likelihood of success on the merits, or that there is no adequate remedy at law.

Hutson seeks to have the Court direct Counter-Defendants and Third-Party Defendants admit their alleged knowledge of extrinsic fraud. Hutson has failed to make a prima facie case that

any fraud has been committed or is known by the Counter-Defendants and Third-Party Defendants in order to show a likelihood of success on the merits. These allegations of fraud were previously considered in Hutson's Bad Faith Action, which is presently on appeal in the South Carolina Court of Appeals. Hutson has made several filings with the appellate court related to his allegations of continued fraud, which have or will be disposed of by the Court of Appeals. Thus, there is no evidence of irreparable injury or an inadequate remedy at law.

Accordingly, the Court **DENIES** Defendant/Counter-Plaintiff Hutson's motion.[1]

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

[1] Contemporaneous with the entry of the instant Order, the Court is entering Orders granting Plaintiff's Motion for Preliminary Injunction; granting Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment; and granting Plaintiff's three Motions to Strike. The Court's findings and conclusions in these additional Orders are incorporated herein by reference.

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Richland Common Pleas

Case Caption:	Penn America Insurance Company , plaintiff, et al vs Morris Beach Hutson , defendant, et al
Case Number:	2020CP4003810
Type:	Order/Temporary Injunction

So Ordered

s/ R.E. Hood #2164

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